101-608

CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 1990

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Public Law 101-608
101st Congress

An Act

Nov. 16, 1990
[S. 605]

To authorize appropriations for the Consumer Product Safety Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer Product Safety Improvement Act of 1990. 15 USC 2051 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Product Safety Improvement Act of 1990".

TITLE I—AMENDMENTS TO ACTS

SEC. 101. REFERENCE.

Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consumer Product Safety Act.

SEC. 102. QUALIFICATIONS OF MEMBERS OF THE COMMISSION.

Section 4(a) (15 U.S.C. 2053(a)) is amended by inserting immediately after the first sentence the following: "In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission.".

SEC. 103. QUORUM ON COMMISSION.

The first sentence of section 4(d) (15 U.S.C. 2053(d)) is amended by inserting before the period a comma and the following: "except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two".

SEC. 104. APPOINTMENT OF CERTAIN PERSONNEL.

Section 4(g)(1) (15 U.S.C. 2053(g)(1)) is amended to read as follows:

"(g)(1)(A) The Chairman, subject to the approval of the Commission, shall appoint as officers of the Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an

Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Associate Executive Director of Compliance and Administrative Litigation except the position of acting Associate Executive Director of Compliance and Administrative Litigation.

"(B)(i) No individual may be appointed to such a position on an acting basis for a period longer than 90 days unless such appointment is approved by the Commission.

"(ii) The Chairman, with the approval of the Commission, may remove any individual serving in a position appointed under subparagraph (A).

"(C) Subparagraph (A) shall not be construed to prohibit appropriate reorganizations or changes in classification."

SEC. 105. PRIORITIES.

(a) AMENDMENT.—Section 4 (15 U.S.C. 2053) is amended by adding at the end the following:

"(j) At least 30 days before the beginning of each fiscal year, the Commission shall establish an agenda for Commission action under the Acts under its jurisdiction and, to the extent feasible, shall establish priorities for such actions. Before establishing such agenda and priorities, the Commission shall conduct a public hearing on the agenda and priorities and shall provide reasonable opportunity for the submission of comments."

Administrative practice and procedure.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to fiscal years which begin more than 180 days after the date of the enactment of this Act.

15 USC 2053 note.

SEC. 106. DISCLOSURE TO CONTRACTORS.

Paragraph (8) of section 6(a) (15 U.S.C. 2055(a)) is amended to read as follows:

"(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers, employees, or representatives of the Commission (including contractors) concerned with carrying out this Act or when relevant in any administrative proceeding under this Act or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information—

"(A) in Commission administrative proceedings or in judicial proceedings to which the Commission is a party, or

"(B) to representatives of the Commission (including contractors),

shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or for disclosures to such representatives or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section."

SEC. 107. MONITORING COMPLIANCE.

(a) CONSUMER PRODUCT SAFETY ACT.—Section 7(b) (15 U.S.C. 2056(b)) is amended—

(1) by inserting "(1)" after "(b)", and

(2) by adding at the end the following:

"(2) The Commission shall devise procedures to monitor compliance with any voluntary standards—

"(A) upon which the Commission has relied under paragraph (1);

"(B) which were developed with the participation of the Commission; or

"(C) whose development the Commission has monitored.".

(b) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 3(g) of the Federal Hazardous Substances Act (15 U.S.C. 1262(g)) is amended by adding at the end the following:

"(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

"(A) upon which the Commission has relied under paragraph (2) of this subsection;

"(B) which were developed with the participation of the Commission; or

"(C) whose development the Commission has monitored.".

(c) FLAMMABLE FABRICS ACT.—Section 4(h) of the Flammable Fabrics Act (15 U.S.C. 1193(h)) is amended by adding at the end the following:

"(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

"(A) upon which the Commission has relied under paragraph (2) of this subsection;

"(B) which were developed with the participation of the Commission; or

"(C) whose development the Commission has monitored.".

Administrative practice and procedure

SEC. 108. VOLUNTARY STANDARDS.

(a) CONSUMER PRODUCT SAFETY ACT.—Section 9(b)(2) (15 U.S.C. 2058(b)(2)) is amended by striking out the period and inserting the following: ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.".

(b) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 3(g)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1262(g)(2)) is amended by striking out the period and inserting the following: ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in

making any determination regarding reliance on the involved voluntary standard under this subsection.".

(c) FLAMMABLE FABRICS ACT.—Section 4(h)(2) of the Flammable Fabrics Act (15 U.S.C. 1193(h)(2)) is amended by striking out the period and inserting the following: ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.".

SEC. 109. PROPOSED RULES.

Section 9(c) (15 U.S.C. 2058(c)) is amended by adding at the end the following: "Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of an advance notice of proposed rulemaking under subsection (a) relating to the product involved, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register.". Federal Register, publication

SEC. 110. PETITIONS AND VOLUNTARY STANDARDS.

(a) CONSUMER PRODUCT SAFETY ACT.—Section 9 (15 U.S.C. 2058) is amended by adding at the end the following:

"(j) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.".

(b) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) is amended by adding at the end the following:

"(j) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, request-

ing the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.".

(c) FLAMMABLE FABRICS ACT.—Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) is amended by adding at the end the following:

"(k) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.".

SEC. 111. COST-BENEFIT ANALYSIS.

(a) CONSUMER PRODUCT SAFETY ACT.—

(1) Section 12 (15 U.S.C. 2061) is amended by adding at the end the following:

"(g) Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product or a person under this section, to prepare a comparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.".

(2) Section 15 (15 U.S.C. 2064) is amended by adding at the end the following:

"(h) Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.".

(b) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) is amended by adding at the end the following:

"(g) Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.".

SEC. 112. INFORMATION REPORTING TO CONSUMER PRODUCT SAFETY COMMISSION.

(a) SECTION 15(b) REPORTING.—Section 15(b) (15 U.S.C. 2064(b)) is amended—

(1) in paragraph (1), by striking "; or" and inserting in lieu thereof "or with a voluntary consumer product safety standard upon which the Commission has relied under section 9;";

(2) in paragraph (2), by striking the comma and inserting in lieu thereof "; or";

(3) by inserting immediately after paragraph (2) the following:

"(3) creates an unreasonable risk of serious injury or death,";

(4) by striking "comply or of such defect," and inserting in lieu thereof "comply, of such defect, or of such risk,"; and

(5) by striking "defect or failure to comply," and inserting in lieu thereof "defect, failure to comply, or such risk,".

(b) INFORMATION REPORTING.—The Consumer Product Safety Act is amended by adding at the end the following new section:

"INFORMATION REPORTING

Manufacturing. 15 USC 2084.

"SEC. 37. (a) If a particular model of a consumer product is the subject of at least 3 civil actions that have been filed in Federal or State court for death or grievous bodily injury which in each of the 24-month periods defined in subsection (b) result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall, in accordance with subsection (c), report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action.

"(b) The 24-month periods referred to in subsection (a) are the 24-month period commencing on January 1, 1991, and subsequent 24-month periods beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period.

"(c)(1) The information required by subsection (a) to be reported to the Commission, with respect to each civil action described in subsection (a), shall include and in addition to any voluntary information provided under paragraph (2) shall be limited to the following:

"(A) The name and address of the manufacturer.

"(B) The model and model number or designation of the consumer product subject to the civil action.

"(C) A statement as to whether the civil action alleged death or grievous bodily injury, and in the case of an allegation of grievous bodily injury, a statement of the category of such injury.

"(D) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff.

"(E) in the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned the civil action, and the court in which the civil action was filed.

"(2) A manufacturer furnishing the report required by paragraph (1) may include (A) a statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed or (B) any other information which the manufacturer chooses to provide.

A manufacturer reporting to the Commission under subsection (a) need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

"(3) No statement of the amount paid by the manufacturer in a final settlement shall be required as part of the report furnished under subsection (a), nor shall such a statement of settlement amount be required under any other section of this Act.

"(d) The reporting of a civil action described in subsection (a) by a manufacturer shall not constitute an admission of—

"(1) an unreasonable risk of injury,

"(2) a defect in the consumer product which was the subject of such action,

"(3) a substantial product hazard,

"(4) an imminent hazard, or

"(5) any other admission of liability under any statute or under any common law.".

"(e) For purposes of this section:

"(1) A grievous bodily injury includes any of the following categories of injury: mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to require extended hospitalization.

"(2) For purposes of this section, a particular model of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance."

(c) Section 6 (15 U.S.C. 2055) is amended by adding at the end the following:

Confidential business information.

"(e)(1) Notwithstanding the provisions of section 552 of title 5, United States Code, subsection (a)(7) of this section, or of any other law, except as provided in paragraphs (2), (3), and (4), no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may—

"(A) publicly disclose information furnished under subsection (c)(1) or (c)(2)(A) of section 37;

"(B) use such information for any purpose other than to carry out the Commission's responsibilities; or

"(C) permit anyone (other than the members, officers, and employees of the Commission or officers or employees of the Department of Justice who require such information for an action filed on behalf of the Commission) to examine such information.

"(2) Any report furnished under subsection (c)(1) or (c)(2)(A) of section 37 shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding, except in an action against such manufacturer under section 20, 21, or 22 for failure to furnish information required by section 37.

Records.

"(3) The Commission may, upon written request, furnish to any manufacturer or to the authorized agent of such manufacturer authenticated copies of reports furnished by or on behalf of such manufacturer in accordance with section 37, upon payment of the actual or estimated cost of searching the records and furnishing such copies.

"(4) Upon written request of the Chairman or Ranking Minority Member of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee, the Commission shall provide to the Chairman or Ranking Minority Member any information furnished to the Commission under section 37 for purposes that are related to the jurisdiction of such committee or subcommittee.

"(5) Any officer or employee of the Commission or other officer or employee of the Federal Government who receives information provided under section 37, who willfully violates the requirements of this subsection shall be subject to dismissal or other appropriate disciplinary action consistent with procedures and requirements established by the Office of Personnel Management.".

(d) PROHIBITED ACT.—Section 19(a) (15 U.S.C. 2068(a)) is amended by adding at the end the following new paragraph:

"(11) fail to furnish information required by section 37.".

(e) CIVIL PENALTIES.—The second sentence of section 20(a)(1) (15 U.S.C. 2069(a)(1)) is amended by striking "or (10)" and inserting in lieu thereof "(10), or (11)".

(f) CONGRESSIONAL REPORTS.— 15 USC 2084 note.

(1) The Consumer Product Safety Commission shall report to the Congress on the extent to which reports made to the Commission under section 37 of the Consumer Product Safety Act have assisted the Commission in carrying out its responsibilities under such Act. The report—

(A) shall provide aggregate data and not the details and contents of individual reports filed with the Commission pursuant to such section 37,

(B) shall not disclose the brand names of products included in reports under such section 15(b) or 37 or the number of reports under such sections for particular models or classes of products, and Confidential business information.

(C) shall include—

(i) a comparison of the number of reports received under such section 37 and the number of reports received under section 15(b) of such Act,

(ii) a comparison of the number of reports filed with the Commission before the date of the enactment of this Act and after such date, and

(iii) the total number of settlements and court judgments reported under such section 37 and the total number of rulemakings and enforcement actions undertaken in response to such reports,

(iv) recommendations of the Commission for additional improvements in reporting under the Consumer Product Safety Act.

(2) The first report under paragraph (1) shall be due February 1, 1992, and the second such report shall be due April 1, 1993.

SEC. 113. SETTLEMENT OFFERS.

Section 15(f) (15 U.S.C. 2064(f)) is amended by adding at the end the following: "Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration

unless the settlement offer is clearly frivolous or duplicative of offers previously made.".

SEC. 114. PRODUCT SURVEILLANCE PROGRAM.

Section 17 (15 U.S.C. 2066) is amended by adding at the end the following:

"(h)(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this Act and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

"(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

Reports

"(3) The Commission shall periodically report to the Congress the results of the surveillance program under paragraph (1).".

SEC. 115. CIVIL PENALTIES.

(a) CONSUMER PRODUCT SAFETY ACT.—Section 20(a) (15 U.S.C. 2069(a)) is amended—

(1) by striking "$2,000" and inserting in lieu thereof "$5,000";

(2) by striking "$500,000" each place it appears and inserting in lieu thereof "$1,250,000"; and

(3) by adding at the end thereof the following:

"(2)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

Federal Register, publication

"(B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

"(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

"(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

"(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

"(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

"(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

"(D) For purposes of this subsection:

"(i) The term 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(ii) The term 'cost-of-living adjustment for the preceding five years' means the percentage by which—

"(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

"(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.".

(b) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5 of the Federal Hazardous Substances Act (15 U.S.C. 1264) is amended by adding at the end the following:

"(c)(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations.

"(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4—

"(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substances involved; and

"(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

"(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

"(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

"(5) As used in the first sentence of paragraph (1), the term 'knowingly' means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

"(6)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

"(B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

Federal Register, publication

"(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

"(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

"(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

"(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

"(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

"(D) For purposes of this subsection:

"(i) The term 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(ii) The term 'cost-of-living adjustment for the preceding five years' means the percentage by which—

"(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

"(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted."

(c) FLAMMABLE FABRICS ACT.—Section 5 of the Flammable Fabrics Act (15 U.S.C. 1264) is amended by adding at the end the following:

15 USC 1194

"(e)(1) Any person who knowingly violates a regulation or standard under section 4 shall be subject to a civil penalty not to exceed $5,000 for each such violation, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations.

"(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 4, the Commission shall consider the nature and number of the violations, the severity of the risk of injury, the occurrence or absence of injury, and the appropriateness of such penalty in relation to the size of the business of the person charged.

"(3) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the nature and number of the violations, the appropriateness of such penalty to the size of the business of the persons charged, the severity of the risk of injury, and the occurrence or absence of injury. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

"(4) As used in paragraph (1), the term 'knowingly' means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

"(5)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

Federal Register, publication.

"(B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized

penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

"(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

"(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

"(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

"(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

"(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

"(D) For purposes of this subsection:

"(i) The term 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(ii) The term 'cost-of-living adjustment for the preceding five years' means the percentage by which—

"(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

"(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.".

(d) REPORT ON CIVIL PENALTIES.— 15 USC 2076a

(1) Beginning 1 year after the date of enactment of this Act, and every year thereafter, the Consumer Product Safety Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives the information specified in paragraph (2) of this subsection. Such information may be included in the annual report to the Congress submitted by the Commission.

(2) The Commission shall submit information with respect to the imposition of civil penalties under the statutes which it administers. The information shall include the number of civil penalties imposed, an identification of the violations that led to the imposition of such penalties, and the amount of revenue recovered from the imposition of such penalties.

SEC. 116. CHRONIC HAZARD ADVISORY PANEL.

Section 28(b)(1) (15 U.S.C. 2077(b)(1)) is amended by inserting immediately after "States" the following: "(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research)".

SEC. 117. AUTHORIZATION.

Section 32(a) (15 U.S.C. 2081(a)) is amended by striking out paragraphs (1) through (9) and inserting in lieu thereof the following:

"(1) $42,000,000 for fiscal year 1991, and

"(2) $45,000,000 for fiscal year 1992.".

SEC. 118. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5 of the Federal Hazardous Substances Act (15 U.S.C. 1264), as amended by

section 115(b) of this Act, is amended by adding at the end the following:

"(d) In the case of an attorney general of a State alleging a violation that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce any requirement of this Act relating to misbranded or banned hazardous substances. The procedural requirements of section 24 of the Consumer Product Safety Act shall apply to any such action.".

(b) FLAMMABLE FABRICS ACT.—Section 5(a) of the Flammable Fabrics Act (15 U.S.C. 1194(a)) is amended by adding at the end the following: "In the case of an attorney general of a State alleging a violation of a standard or regulation under section 4 that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 24 of the Consumer Product Safety Act shall apply to any such action.".

15 USC 2076 note.

SEC. 119. USER FEE STUDY.

The Consumer Product Safety Commission shall conduct a study of the feasibility of requiring entities subject to the Consumer Product Safety Act to pay to the Commission amounts to defray the reasonable costs of particular services provided by the Commission to such entities. The Commission shall complete the study within one year of the date of the enactment of this Act and shall report the results of the study to the Congress.

Reports.

TITLE II—RELATED PROVISIONS

SEC. 201. LIGHTERS.

Infants and children.

The Consumer Product Safety Commission shall pursue its pending proceedings to establish a safety standard for cigarette lighters, taking into account the need to protect children from harm from lighters.

SEC. 202. INDOOR AIR POLLUTANTS.

Reports.

Not later than 180 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall report to Congress on its activities to reduce exposure of individuals to indoor air pollutants. Such report shall—

(1) briefly describe the activities of the Commission before such date of enactment in the area of indoor air quality,

(2) contain a detailed discussion of (A) the current activities of the Commission in such area, and (B) the further activities which the Commission plans to provide remedial measures to address the indoor air quality problems identified by the Commission,

(3) discuss the nature of indoor air quality hazards, the association of consumer products with such hazard, and, to the extent known, remedial measures which may be taken with respect to such hazard, and

(4) discuss the Commission's overall strategies and plans for addressing the identified indoor air quality hazards and for identifying and remedying such hazards.

SEC. 203. AUTOMATIC GARAGE DOOR OPENERS.

15 USC 2056 note.

(a) CONSUMER PRODUCT SAFETY RULE.—The provisions of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act.

(b) REQUIREMENTS.—

(1) Effective on and after January 1, 1991, each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988.

(2)(A) Effective on and after January 1, 1993, all residential automatic garage door openers manufactured on and after such date for sale in the United States shall conform to any additional entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, which were issued after the date of the enactment of this Act to become effective on or before January 1, 1993.

Regulations.

(B) If, by June 1, 1992, the Underwriters Laboratories, Inc., has not issued a revision to the May 4, 1988, Standards for Safety—UL 325, third edition, to require an entrapment protection feature or device in addition to that required by the May 4, 1988, Standard, the Consumer Product Safety Commission shall begin a rulemaking proceeding, to be completed no later than October 31, 1992, to require an additional such feature or device on all automatic residential garage door openers manufactured on or after January 1, 1993, for sale in the United States. If such a revision is issued by the Underwriters Laboratories, Inc. after the rulemaking has commenced, the rulemaking shall be terminated and the revision shall be incorporated in the consumer product safety rule under subsection (a) unless the Commission has determined under subsection (c) that such revision does not carry out the purposes of subsection (b).

(c) REVISION OF RULE.—If, after June 1, 1992, or the date of a revision described in subsection (b)(2)(B) if later, the Underwriters Laboratories, Inc. proposes to further revise the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, the Laboratories shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 30 days of such notice, the Commission notifies the Laboratories that the Commission has determined that such revision does not carry out the purposes of subsection (b).

(d) LABELING.—On and after January 1, 1991, a manufacturer selling or offering for sale in the United States an automatic residential garage door opener manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b). The display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325, on both the container and the system, shall satisfy the requirements of this subsection.

Manufacturing

(e) NOTIFICATION.—Effective on and after July 1, 1991, all manufacturers of automatic residential garage door openers shall, in consultation with the Consumer Product Safety Commission, notify the public of the potential for entrapment by garage doors equipped with automatic garage door openers and advise the public to test their openers for the entrapment protection feature or device required by subsection (b).

(f) PREEMPTION.—In applying section 26(a) of the Consumer Product Safety Act (15 U.S.C. 2075) with respect to the consumer product safety rule of the Consumer Product Safety Commission under subsection (a), only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to such section.

(g) REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section and sections 7 and 9 of the Consumer Product Safety Act do not apply to such issuance. Any additional or revised requirement issued by the Commission shall provide an adequate degree of protection to the public.

(h) CONSTRUCTION.—Nothing in this section shall affect or modify in any way the obligations or liabilities of any person under the common law or any Federal or State law.

15 USC 2054 note.

SEC. 204. STUDY OF AVERSIVE AGENTS.

The Consumer Product Safety Commission shall conduct a study of requiring manufacturers of consumer products to include aversive agents, as appropriate, in products which present a hazard if ingested to determine the potential effectiveness of the aversive agents in deterring ingestion. In conducting the study, the Commission shall consult with appropriate consumer, health, and business organizations and appropriate government agencies. The Commission shall report to Congress the status of the study within one year of the date of the enactment of this Act and shall complete the study not later than 2 years after such date of enactment.

Reports.

Approved November 16, 1990.

LEGISLATIVE HISTORY—S. 605 (H.R. 4952):

HOUSE REPORTS: No. 101-567 accompanying H.R. 4952 (Comm. on Energy and Commerce) and No. 101-914 (Comm. of Conference).
SENATE REPORTS: No. 101-37 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD:
Vol. 135 (1989): Aug. 3, considered and passed Senate.
Vol. 136 (1990): July 16, H.R. 4952 considered and passed House; S. 605, amended, passed in lieu.
Oct. 22, Senate agreed to conference report.
Oct. 25, House agreed to conference report.

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